UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

JULENE VALENTINE, Plaintiff, -against- BRAIN & SPINE SURGEONS OF NEW YORK, P.C., SCOLIOSIS AND SPINE SURGERY P.C., KRISHNA SHARMA AND RUDOLPH TADDONIO, BOTH INDIVIDUALLY AS AIDERS AND ABETTORS Defendant(s).	17-CV-2275 COMPLAINT PLAINTIFF DEMANDS A TRIAL BY JURY

Plaintiff, Julene Valentine, by her attorney Brendan Chao, for her Complaint against Defendants, Brain & Spine Surgeons of New York, P.C., ("BSSNY"), Scoliosis and Spine Surgery ("SSSX"), Krishna Sharma ("Sharma") and Rudolph Taddonio ("Taddonio"), both individually as aiders and abettors alleges as follows:

THE NATURE OF THE ACTION

1. This is a civil action for damages and remedies brought under the Americans with Disabilities Act ("ADA"), as amended, 42 U.S.C. § 12101 et seq.; and the New York State Executive Law, as amended, § 290 et seq. ("New York State Human Rights Law"). Specifically, Defendant discriminated against Ms. Valentine and terminated her employment because of a perceived disability.

THE PARTIES

2. Plaintiff Julene Valentine ("Plaintiff" or "Ms. Valentine") was employed by Defendants from May 4, 1987 to March 3, 2016, when her employment was terminated by

Defendants; Plaintiff resides in White Plains, New York.

3. At all relevant times herein, Plaintiff was an "employee" of Defendants within the meaning of the applicable statutes.

4. At all relevant times herein, the corporate defendants were an "employer" within the meaning of the applicable statutes. The corporate defendants' principal executive offices are located at 244 Westchester Ave., Suite 310 White Plains, New York 10604.

5. The individual defendants are a medical surgeons engaged in the business of brain and spine surgery, and upon information and belief, are residents of New York State.

JURISDICTION AND VENUE

6. This Court has jurisdiction over this action under 28 U.S.C. § 1331, and principles of supplemental jurisdiction, 28 U.S.C. § 1367.

7. Ms. Valentine filed a charge of discrimination with the Equal Employment Opportunity Commission ("EEOC") on June 13, 2016.

8. Ms. Valentine received a Dismissal and Notice of Rights from the EEOC, and less than ninety days have elapsed between the filing of the instant complaint and her receipt of a Right to Sue Letter from the EEOC.

9. Venue is proper in this district under 28 U.S.C. § 1391(b) because a substantial part of the events giving rise to Plaintiff's claims occurred in the Southern District of New York.

FACTS

10. Ms. Valentine began her employment with SSSX on May 4, 1987, and her employment with Defendants ended on March 3, 2016.

11. In 1987, the practice's name was Rudolph F. Taddonio, M.D., P.C, doing business as Scoliosis & Spinal Surgery. It was not until in or about September 2015, that the practice name was changed to Scoliosis & Spinal Surgery, P.C.

12. Ms. Valentine was first hired by Defendants SSSX and Taddonio as a medical transcriptionist.

13. Within a year of her employment, one of the receptionists quit, so Ms. Valentine took on extra responsibilities for her employers; she took on front desk receptionist responsibilities while continuing her transcriptionist duties.

14. Ms. Valentine was given more responsibilities such as inputting insurance and patient payments into a database and performing all end-of-month reports.

15. Ms. Valentine's was sent to a course in Pittsburgh, PA to learn more about the hardware/software they were using at the office, and she shared this new information with her co-workers.

16. Ms. Valentine's duties and responsibilities as medical transcriptionist and front-desk receptionist included, among other things, answering phones, entering insurance and patient payments in the computer, performing all end of the month reports, training in medical computer software, teaching other office employees new computer software.

17. In or about 1989, Ms. Valentine was promoted to surgical coder and biller, also known as the top clerical position at the defendants' office.

18. Her job duties as surgical coder and biller included, among other things, doing the banking, paying office invoices, sending surgical claims to insurance companies, negotiating with insurance companies, booking surgical procedures, and transcriptionist duties.

19. Ms. Valentine also completed the yearly Morbidity and Mortality clinical study for the Scoliosis Research Society. In addition, plaintiff was sent to seminars relevant to the defendants' business.

20. Ms. Valentine was also responsible for opening and running the Stamford, CT office every Thursday for approximately 15 years.

21. Ms. Valentine also organized office moves, transported files from the New York office, provided Excel sheets and submitted reimbursements, and billed claims for a class action lawsuit.

22. Throughout the course of her employment with Defendants, Ms. Valentine was an excellent employee, was given substantial responsibility, and always performed her duties in a diligent, thorough, professional, and competent manner.

23. In or about early January 2008, Ms. Valentine was working alone at the Stamford office when she received a call from her doctor who told her that she was diagnosed with breast cancer.

24. There was no other employee who could cover for Ms. Valentine that day, so she continued to work through the end of the day despite her discovery of this potentially life threatening condition.

25. In or about the end of January 2008, Ms. Valentine underwent a lumpectomy medical procedure.

26. Thereafter, Ms. Valentine scheduled her daily radiation treatments at 7:00 A.M. so she would not miss any work time, and she would arrive to work on time at 8:00 AM. She received 33 treatments, and at no time was she late, nor did she miss any work.

27. In or about 2013, Ms. Valentine was promoted to Practice Manager.

28. Her job duties and responsibilities as practice manager included, all of her other previously mentioned duties, in addition to setting up the physicians' schedules, making sure their vacations dates, office hours, and seminars were planned so as not to interfere with patient emergence surgeries, planning out the monthly schedule of the radiology technologist, and making sure employee days off and vacations did not overlap so that there were enough staff to perform patient office hours.

29. In or about November 2015, Dr. Taddonio and Krishna Sharma, M.D. informed Ms. Valentine that the practice was "merging" with Brain and Spine Surgeons of NY (hereinafter "BSSNY").

30. Under this merger, SSSX's practice would operate under BSSNY's Federal Tax ID Number, the practice would use BSSNY's software program, all insurance payments and patient payments would be inputted by BSSNY, and BSSNY would provide the necessary Explanation of Benefits for the patient's review, and appeal if necessary.

31. Ms. Valentine started to suffer from constant tiredness, lack of appetite, skin discoloration, trouble walking, shortness of breath, and dizziness.

32. In or about November 2015, Sandy Solotaroff ("Ms. Solotaroff"), a co-worker, informed Dr. Taddonio about Ms. Valentine's ongoing symptoms. Dr. Taddonio replied to Ms. Solotaroff that "She's fine."

33. In or about December 2015, Ms. Solotaroff again told Dr. Taddonio that Ms. Valentine did not look well. Dr. Taddonio informed Ms. Valentine's co-workers that he would make sure she "goes to a doctor for a work up," and that he would speak to her husband.

34. At no time did Dr. Taddonio approach Ms. Valentine or her husband regarding her medical condition.

35. On or about this same time, Ms. Valentine continued to work 10-12 hours a day.

36. During this time, Ms. Valentine's co-workers informed her again that she did not look well. She lost approximately seventy-five pounds, and her symptoms began to worsen.

37. By February 2016 her legs and thighs were swollen to the point that she could barely bend her legs and could only walk 8-10 steps at a time.

38. On or about February 19, 2016, Ms. Valentine met with Dr. Aris Comninellis ("Dr. Comninellis") at Westmed Medical Group. Dr. Comninellis ran tests, e.g. a complete blood count and urinalysis.

39. Dr. Comninellis diagnosed Ms. Valentine with "life threatening anemia" and told her she needed to go to the Emergency Room ("ER") at White Plains Hospital by ambulance. She could not drive herself or have a family member take her because the doctor wanted medical personnel with her in case she required immediate care.

40. Anemia is a disorder that develops when there is not enough hemoglobin (red blood cells). Hemoglobin are the cells that carry oxygen. If the hemoglobin is low or abnormal the body cannot get enough oxygen. Dr. Comninellis informed Ms. Valentine that her hemoglobin was 3.8; a normal hemoglobin level for a female is between 11 and 15.

41. On or about February 19, 2016, through February 21, 2016, Ms. Valentine was hospitalized at White Plains Hospital and received six units of packed red cells, and an IV of iron.

42. During her hospital stay, on or about February 20, 2016, defendant Sharma, a partner at SSSX since February of 2009, visited Ms. Valentine and they spoke about her condition, the treatment she received, and how she felt.

43. On or about February 21, 2016, the day of Ms. Valentine's discharge, a Westmed hospital Physician informed her that her hemoglobin was 9, and that she either had an iron deficiency due to non-absorption of iron, or was bleeding internally.

44. On or about February 22, 2016, Dr. Comninellis informed Ms. Valentine that she should not work until at least Monday, February 29, 2016.

45. On or about February 29, 2016, Ms. Valentine returned to work at SSSX and worked the whole day.

46. On or about the same day, Ms. Valentine informed Dr. Taddonio she would have to miss work on Wednesday, March 2, 2016, for a scheduled colonoscopy and endoscopy.

47. On or about March 3, 2016, Ms. Valentine was terminated from SSSX.

48. Ms. Valentine was informed of her termination through a phone call from Dr. Taddonio and Dr. Sharma, stating that "It was a sad day."

49. Ms. Valentine became aware of SSSX's merger with BBSNY as early as October 2015. Both medical practices were on the same floor of the building. She began to meet with BBSNY's Business Manager, Denise Lewis ("Ms. Lewis"), shortly thereafter to discuss,

among other things, how SSSX billed claims, insurance networks, and the various roles of SSSX employees.

50. Ms. Valentine was informed by Ms. Lewis that SSSX would immediately begin submitting office and surgical claims under the BSSNY Federal Tax ID number and the information would be submitted by BSSNY employees.

51. Ms. Valentine received emails from a BSSNY administrator, Ken Tompkins, regarding x-ray reimbursements so that he could decide whether to buy a new digital x-ray machine, or continue to use the one in the SSSX office.

52. BSSNY's office manager began to reduce the hours of several SSSX employees.

53. BSSNY was making employment decisions unilaterally at this point, as the affected employees reported the reduced hours to Respondent Taddonio, who said he would speak to someone at BSSNY.

54. Upon information and belief, Dr. Taddonio informed Ms. Valentine's co-workers, Ms. Solotaroff and Nanette Digiralomo that the reason he was letting Ms. Valentine go was because he felt she was "not doing her job up to her capability because she was ill." He also told them that he thought Ms. Valentine may have a "neurological problem."

FIRST CAUSE OF ACTION
(Disability Discrimination Under the ADA - Failure to Accommodate as to Corporate Defendants Only)

55. Plaintiff repeats and realleges the allegations contained in paragraphs 1 through 54 as if separately set forth herein.

56. At all relevant times, Plaintiff was an "employee" of Defendants under the ADA, 42 U.S.C. § 12111(4).

57. On information and belief, Defendants are "employers" under the ADA, 42 U.S.C. § 12111(5).

58. Plaintiff is, and has been at all relevant times; a qualified individual with a disability and a record of a disability within the meaning of the ADA or, in the alternative, Defendants regarded or perceived Plaintiff as suffering from a physical or mental impairment that rendered her disabled within the meaning of the ADA.

59. Plaintiff is, and has been at all relevant times, otherwise qualified for the position she held at SSSX and BSSNY; she was, and is, able to perform the essential functions of that position with reasonable accommodation.

60. Plaintiff also has a record of the illnesses described in the preceding paragraphs, and Defendants perceived Ms. Valentine as disabled.

61. Defendants were aware of plaintiff's medical condition, and her medical need to undergo, among other things, a colonoscopy and endoscopy.

62. Defendants failed to accommodate plaintiff's medical condition by terminating her employment three days after she returned to work.

63. Since Defendants engaged in their discriminatory practices with malice or with reckless disregard for Plaintiff's federally protected rights, Plaintiff also requests an award of punitive damages, in an amount to be determined at trial.

SECOND CAUSE OF ACTION
(Disability Discrimination Under the ADA - Discriminatory Termination as to Corporate Defendants Only)

64. Plaintiff repeats and realleges the allegations contained in paragraphs 1 through 63 as if separately set forth herein.

65. At all relevant times, Plaintiff was an "employee" of Defendants under the ADA, 42 U.S.C. § 12111(4).

66. On information and belief, Defendants are "employers" under the ADA, 42 U.S.C. § 12111(5).

67. Plaintiff is, and has been at all relevant times; a qualified individual with a disability and a record of a disability within the meaning of the ADA or, in the alternative, Defendants regarded or perceived Plaintiff as suffering from a physical or mental impairment that rendered her disabled within the meaning of the ADA.

68. Plaintiff is, and has been at all relevant times, otherwise qualified for the position she held at SSSX and BSSNY; she was, and is, able to perform the essential functions of that position with reasonable accommodation.

69. Plaintiff also has a record of the illnesses described in the preceding paragraphs, and Defendants perceived Ms. Valentine as disabled.

70. Defendants terminated Ms. Valentine's employment because of her perceived disability in violation of the ADA; the reason or reasons given by Defendants for terminating Ms. Valentine's employment are either a pretext for or an admission of disability discrimination.

71. As a result of Defendants' discrimination, Plaintiff has suffered substantial damages, including but not limited to mental distress and lost wages and benefits, in an amount to be determined at trial.

72. Since Defendants engaged in their discriminatory practices with malice or with reckless disregard for Plaintiff's federally protected rights, Plaintiff also requests an award of punitive damages, in an amount to be determined at trial.

THIRD CAUSE OF ACTION
(Disability Discrimination Under the New York State Human Rights Law — Failure to Accommodate)

73. Plaintiff repeats and realleges the allegations contained in paragraphs 1 through 72 as if separately set forth herein.

74. At all relevant times, Plaintiff was an "employee" of Defendants for purposes of §§ 292 and 296, as well as all other relevant sections of the New York State Human Rights Law.

75. On information and belief, Defendants are "employers" for purposes of §§ 292 and 296, as well as all other relevant sections of the New York State Human Rights Law.

76. At all relevant times, Plaintiff was an individual with a disability or an individual perceived or regarded as being disabled within the meaning of the New York State Human Rights Law, and her disability led to the termination of her employment.

77. Plaintiff also has a record of the illnesses described in the preceding paragraphs, and Defendants perceived Ms. Valentine as disabled.

78. Defendants were aware of plaintiff's medical condition, and her medical need to undergo, among other things, a colonoscopy and endoscopy.

79. Defendants failed to accommodate plaintiff's medical condition by terminating her employment three days after she returned to work.

FOURTH CAUSE OF ACTION
(Disability Discrimination Under the New York State Human Rights Law — Discriminatory Termination)

80. Plaintiff repeats and realleges the allegations contained in paragraphs 1 through 79 as if separately set forth herein.

81. At all relevant times, Plaintiff was an "employee" of Defendants for purposes of §§ 292 and 296, as well as all other relevant sections of the New York State Human Rights Law.

82. On information and belief, Defendants are "employers" for purposes of §§ 292 and 296, as well as all other relevant sections of the New York State Human Rights Law.

83. At all relevant times, Plaintiff was an individual with a disability or an individual perceived or regarded as being disabled within the meaning of the New York State Human Rights Law, and her disability led to the termination of her employment.

84. Plaintiff also has a record of the illnesses described in the preceding paragraphs.

85. By terminating Ms. Valentine's employment, Defendants discriminated against her because of his disability, in violation of the New York State Human Rights Law, § 296(1).

86. As a result of this discrimination, Plaintiff has suffered substantial damages, including but not limited to mental distress and lost wages and benefits, in an amount to be determined at trial.

WHEREFORE, while reserving the right to seek additional damages as available, plaintiffs demand judgment against defendant as follows:

A. On the First and Second Causes of Action, back pay and benefits and front pay and benefits, plus compensatory and punitive damages, all in amounts to be determined at trial, as well as attorneys' fees, costs and interest;

B. On the Third and Fourth Causes of Action, back pay and benefits and front pay and benefits, plus compensatory damages, all in amounts to be determined at trial, as well as costs and interest;

C. Such other and further relief as this Court deems just and proper.

Dated: March 29, 2017
Rockville Centre, N.Y.

BRENDAN CHAO
Attorney & Counsellor at Law

By: ______________________
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